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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: HMO - 206995

PRELIMINARY RECITALS

Pursuant to a petition filed on November 23, 2022, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 10, 2023, by telephone.

The issue for determination is whether the appeal of a denial of speech therapy is moot.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Sarah McCracken
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a three-year-old resident of Dunn County. He receives BCP benefits, with GHC-Eau Claire his assigned HMO.

2. On or about September 22, 2022, a prior authorization (PA) request for speech therapy was submitted on petitioner's behalf by Foundations Therapy. The PA requested a total of 26 sessions at a frequency of two sessions per week.
3. On September 28, 2022, the HMO denied the request.
4. Petitioner's mother contacted the HMO and contested the denial.
5. On October 31, 2022, the HMO's Grievance and Appeal Committee upheld the denial on grounds it was not medically necessary and was considered duplicative.
6. Petitioner filed an appeal with the Division of Hearings and Appeals (DHA) and a hearing was scheduled for January 10, 2023.
7. By letter dated December 21, 2022, a therapy consultant for the Division of Medicaid Services, Department of Health Services, reviewed the speech therapy request. The Department's consultant found the speech therapy to be medically necessary and indicated it would have been approved by Wisconsin Medicaid Fee for Service.
8. A letter also dated December 21, 2022, submitted by Michelle Rocca, a Nurse Consultant with the Department, indicated the HMO's denial of the speech therapy request was unreasonable and should be reversed.
9. At hearing on January 10, 2023, the HMO's representative indicated that based on the Department's directive it had approved the speech therapy as requested.

DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department of Health Services (Department) requires certain Medical Assistance (MA) recipients to participate in HMOs. Wis. Admin. Code §DHS 104.05(2)(a). HMOs must provide the same services as those provided to persons enrolled in fee for service MA or BadgerCare Plus. Wis. Admin. Code §DHS 104.05(3) and Contract for BCP HMO Services between the HMO and the Department, Article IV, A (January 1, 2020 – December 31, 2021). The criteria for approval by a managed care program contracted with the Department are the same as the approval criteria employed by the Department for MA recipients who are not mandated to participate in HMOs. See Admin. Code §DHS 104.05(3).

In this case, the Department found that the requested speech therapy sessions were medically necessary and that the HMO's denial was unreasonable. In response, the HMO approved the speech therapy.

A matter is moot if the review sought cannot have a practical effect on the existing controversy. See *Racine v. J-T Enterp.*, 64 Wis. 2nd 691, 702; 221 N.W. 2nd 869, 875 (1974). Here, the petitioner was contesting the HMO's denial of the speech therapy sessions. That issue is moot as the HMO has now approved the requested therapy.

CONCLUSIONS OF LAW

The petitioner's appeal of the denial of speech therapy is moot.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

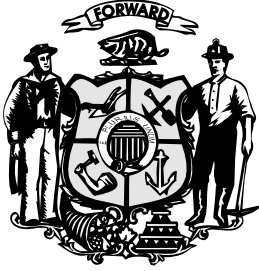
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of January, 2023



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 11, 2023.

Division of Medicaid Services